

APR 24 1985

**Irwin M. Hersh
Executive Vice President, Manufacturing
Emerson Quiet Kool Corporation
400 Woodbine Avenue
Woodbridge, New Jersey 07095**

**Re: Duane Marine Salvage Corporation Site
Administrative Order No. II-CERCLA-50107**

Dear Mr. Hersh:

Enclosed you will find copies of several petitions for withdrawal of orders. These petitions were made on behalf of certain respondents to an administrative order, Index No. II-CERCLA-50102, issued on December 4, 1984, in connection with the Duane Marine facility referenced above.

Your letter dated April 1, 1985, and hand delivered to me at EPA offices on that same day establishes your wish to petition EPA for withdrawal of its administrative order, Index No. II-CERCLA-50107, on the ground that the two inks sent by your company to the Duane Marine facility for disposal were not hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 et seq.

Janet Feldstein of EPA's Emergency and Remedial Response Division has reviewed the documents you submitted with the April 1 letter. I have learned from her that she needs more information concerning the chemical constituents of the two inks before she can make a final determination on the question of hazardousness. In addition, I will need other information in order to establish a record with a sufficient factual basis for a decision by EPA to dismiss Emerson Quiet Kool from the order, or not to dismiss.

The enclosed sample petitions should demonstrate that satisfactory documentation of a claim based on the fact that the materials sent to Duane Marine were not hazardous substances for CERCLA purposes consists of (1) manifests with information that is consistent with such a claim; (2) other records, such as work orders and invoices prepared at the time of the contract with the waste disposal facility; (3) descriptions of the waste generation process which yielded the waste in question; and (4) affidavits given by employees with sufficient knowledge of the processes and transactions at issue, or by an officer of the corporation, or both, where a sworn statement is needed to supplement documentary information with greater detail.

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In your particular case, EPA needs a statement from the manufacturer of the inks in question giving the complete chemical composition of each ink. Once we are in possession of that information, together with information, as described in the foregoing paragraph, that will satisfy us that that substance is what Emerson sent to Duane Marine, we will be able to make our determination concerning the question of hazardousness.

As I explained to Karen Dunning in several telephone calls, the Agency requires a company to meet a burden of proof sufficient to convince a court of law of the validity of its claim. Our records must reflect care in the determinations we make, and must document facts sufficient to support those determinations.

I would like to thank Ms. Dunning for her cooperation and her courtesy in this matter. If you have further questions, please feel free to call me.

Sincerely,

Margaret Thompson
Law Clerk
Waste and Toxic Substances Branch
Office of Regional Counsel

Enclosures

bcc: Janet Feldstein, 2ERRD-SIC